

AMENDED IN ASSEMBLY JANUARY 9, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1486**

**Introduced by Assembly Member Dutra**

February 23, 2001

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~~An act to add Section 43.99 to the Civil Code, relating to building inspections. An act to amend Sections 12640.02 and 12640.07 of the Insurance Code, relating to insurance.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1486, as amended, Dutra. ~~Building inspections: liability~~  
*Mortgage guaranty insurance.*

*The Mortgage Guaranty Insurance Act provides for the regulation of mortgage guaranty insurance, as defined. Under these provisions, mortgage guaranty insurance may be written only to insure loans secured by first or junior liens on authorized real estate securities in an amount not to exceed 100% of the fair market value of the securities.*

*This bill would increase the allowable total indebtedness on which this insurance may be written in this circumstance to 103% of the fair market value of the real estate securities.*

~~Existing law sets forth the State Housing Law, and provides for residential building permits, as specified.~~

~~This bill would provide that there shall be no personal monetary liability on the part of any person who is under contract with an applicant for a residential building permit to check the plans and specifications provided with the application in order to determine compliance with all applicable requirements imposed pursuant to the State Housing Law or any rules or regulations adopted pursuant to that~~

law, or to inspect a work of improvement to determine compliance with these plans and specifications, as specified. The bill would also provide for the construction of its provisions.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

~~SECTION 1. Section 43.99 is added to the Civil Code, to read:~~

*SECTION 1. Section 12640.02 of the Insurance Code is amended to read:*

12640.02. The definitions set forth in this article shall govern the construction of the terms used in this chapter but shall not affect any other provisions of this code.

(a) “Mortgage guaranty insurance” means:

(1) Insurance against financial loss by reason of nonpayment of principal, interest, and other sums agreed to be paid under the terms of any note or bond or other evidence of indebtedness secured by a mortgage, deed of trust, or other instrument constituting a first lien or charge on real estate, provided the improvement on the real estate is a residential building or a condominium unit or buildings designed for occupancy by not more than four families.

(2) Insurance against financial loss by reason of nonpayment of principal, interest, and other sums agreed to be paid under the terms of any note or bond or other evidence of indebtedness secured by a mortgage, deed of trust, or other instrument constituting a junior lien or charge on real estate, provided the improvement on the real estate is a residential building or a condominium unit or building designed for occupancy by not more than four families.

(3) Insurance against financial loss by reason of nonpayment of principal, interest and other sums agreed to be paid under the terms of any note or bond or other evidence of indebtedness secured by a mortgage, deed of trust, or other instrument constituting a lien or charge on real estate, provided the improvement on the real estate is a building or buildings designed for occupancy by five or more families or designed to be occupied for industrial or commercial purposes.

(4) Insurance against financial loss by reason of nonpayment of rent and other sums agreed to be paid under the terms of a written lease for the possession, use or occupancy of real estate, provided the improvement on the real estate is a building or buildings designed to be occupied for industrial or commercial purposes.

(b) (1) “Authorized real estate security” for the purposes of this chapter means either (A) real estate, plus the balance of any pledged cash account, pledged borrower retirement account, or collateralized guaranty agreement contracted for by parents, blood relatives, employers, or nonprofit corporations for the benefit of the borrower; or (B) real estate securing a note, bond, or other evidence of indebtedness by a junior mortgage, deed of trust, or other instrument constituting a junior lien or charge on the real estate, which, when combined with all existing mortgage loan amounts, does not exceed a total indebtedness equal to ~~100~~ 103 percent of the fair market value of the real estate at the time the junior loan is made, provided that, in determining the foregoing ~~100~~ 103 percent limitation, if the loan securing the junior lien is an equity line of credit loan, the full amount of the line of credit to be secured by the junior lien shall be considered the amount of the loan, and further provided, in all cases that both of the following are true:

(i) The real estate loan secured in this manner is any type of loan which a bank, savings and loan association, mortgage banker, credit union, mortgage loan broker, or an insurance company, which is supervised and regulated by a department of this state or an agency of the federal government, is authorized to make or arrange, or would be authorized to make or arrange, disregarding any requirement applicable to such an institution that the amount of the loan not exceed a certain percentage of the value of the real estate.

(ii) The improvement on the real estate is a building or buildings designed for occupancy as specified by paragraphs (1), (2), and (3) of subdivision (a).

(C) The lien on the real estate may be subject and subordinate to the following:

(i) The lien of any public bond, assessment, or tax, when no installment, call, or payment of or under the bond, assessment, or tax is delinquent.

(ii) Outstanding mineral, oil or timber rights, rights-of-way, easements or rights-of-way or support, sewer rights, building restrictions or other restrictions or covenants, conditions or regulations of use, or outstanding leases upon the real property under which rents or profits are reserved to the owner thereof.

(2) “Authorized real estate security” also means a stock or membership certificate issued to a tenant-stockholder or resident-member by a completed fee simple cooperative housing corporation, as defined in Section 17265 of the Revenue and Taxation Code and Section 216 of the United States Internal Revenue Code.

(c) “Contingency reserve” means an additional premium reserve established for the protection of policyholders against the effect of adverse economic cycles.

(d) “Policyholders surplus” means the aggregate of capital, surplus and contingency reserve.

*SEC. 2. Section 12640.07 of the Insurance Code is amended to read:*

12640.07. (a) Mortgage guaranty insurance may be transacted in this state only by a stock or mutual casualty insurer holding a certificate of authority for the transaction of the insurance pursuant to this chapter, and shall be written only to insure either of the following:

(1) Loans secured by first liens on authorized real estate securities not exceeding, at the time the loan is made, ~~100~~ 103 percent of the fair market value of the authorized real estate security, as defined in subparagraph (A) of paragraph (1) of subdivision (b) of Section 12640.02.

(2) Loans secured by junior liens, as defined in subparagraph (B) of paragraph (1) of subdivision (b) of Section 12640.02.

(b) Any reciprocal insurer engaging in this type of business shall be bound by all provisions of this chapter, including the requirements as to paid-in capital and paid-in surplus.

~~43.99. (a) There shall be no personal monetary liability on the part of any person who is under contract with an applicant for a residential building permit to check the plans and specifications provided with the application in order to determine compliance with all applicable requirements imposed pursuant to the State Housing Law (Part 1.5 (commencing with Section 17910) of Division 13 of the Health and Safety Code) or any rules or~~

1 regulations adopted pursuant to that law, or to inspect a work of  
2 improvement to determine compliance with these plans and  
3 specifications if one of the following applies:

4 (1) The person has completed not less than two years of  
5 verifiable experience in the appropriate field and has obtained  
6 certification from a recognized state, national, or international  
7 association pursuant to Sections 18949.28 and 18949.29 of the  
8 Health and Safety Code, as determined by the local building code  
9 agency with respect to those persons who perform construction  
10 inspection and plans examiner services for the local agency from  
11 whom the applicant is seeking the residential building permit.

12 (2) The person is a registered professional engineer, licensed  
13 surveyor, or licensed architect rendering construction inspection  
14 services or plan examination services within the scope of his or her  
15 registration or licensure.

16 (b) This section shall not be construed to relieve from, or lessen  
17 the responsibility of any person who owns, operates, or controls  
18 any residential building for any damages to persons or property  
19 caused by construction or design defects.

20 (c) Nothing in this section, as it relates to construction  
21 inspectors or plans examiners, shall be construed to alter the  
22 requirements for licensure, or the jurisdiction, authority, or scope  
23 of practice, of architects pursuant to Chapter 3 (commencing with  
24 Section 5500) of Division 3 of the Business and Professions Code,  
25 professional engineers pursuant to Chapter 7 (commencing with  
26 Section 6700) of Division 3 of the Business and Professions Code,  
27 or land surveyors pursuant to Chapter 15 (commencing with  
28 Section 8700) of Division 3 of the Business and Professions Code.

29 (d) Nothing in this section shall be construed to alter the  
30 immunity of employees of the Department of Housing and  
31 Community Development under the Tort Claims Act (Div. 3.6  
32 (commencing with Sec. 810), Title 1, Gov. C.) when acting  
33 pursuant to Section 17965 of the Health and Safety Code.